THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.20192 of 1995

ORAL ORDER:

This writ petition is filed seeking Certiorari to call for the records relating to and connected with the order dated 29.5.1995 in A.P.S.A.No.6 of 1993 on the file of the Second Appellate Authority under Section 48(3) of the A.P. Shops and Establishments Act, 1988 and Deputy Commissioner of Labour, Eluru, whereunder the order passed by the lower authority in A.P.S.E. Case No.4 of 1983 dated 14.9.1992 directing the petitioner herein to reinstate the second respondent with full backwages etc., was confirmed.

It appears, second respondent was an employee of the petitioner management. It seems a resignation letter was obtained from him under threat of launching criminal proceedings for certain irregularities committed by him and terminated his services. Aggrieved by the same, second respondent filed A.P.S.E. Case No.4 of 1983 before the Assistant Commissioner of Labour, Eluru. The Assistant Commissioner, after detailed consideration of the matter, directed reinstatement of the second respondent with continuity of service and full back wages. Aggrieved by the same, petitioner management carried the matter in appeal before the appellate authority under Section 48(3) of the A.P. Shops and Establishments Act, 1988. The appellate authority after considering the entire material placed before it and on perusal of the order passed by the primary authority, has came to the conclusion that the primary authority has not committed any error calling for its interference and therefore confirmed the orders passed by the primary authority dated 14.9.1992 in A.P.S.E. Case No.4 of 1983. Aggrieved by the same, the management filed the present writ petition.

It appears that though two employees were involved in the said misconduct, letter of resignation was obtained from the second

respondent under the threat of launching criminal proceedings and his services were dispensed with. This is a matter of evidence and the authority below recorded its findings. It may be necessary to notice few findings recorded by the authority below:

> "On perusal of the evidence of the above three witnesses, it is quite evident that J.Nagamani co-employee and the Respondent are jointly and severally liable for the deficit of stocks and no action was taken against J.Nagamani by the appellate management. This clearly shows the partisan and partial attitude of the appellant in punishing the employees. Had the appellant been impartial, both employees should have been equally responsible for the alleged misappropriation.
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> The learned counsel for appellant harped completely on the resignation letter of the respondent and argued that since the respondent himself admitted the guilt and wanted to quit the employment, he has not right to demand reinstatement. But the evidence on record unclinchingly goes to prove that the resignation letter was given on the advice and threat of one N.Raja Veeraiah, APCO Director of West Godavari district. Under these circumstances, the respondent might have been forced to submit resignation and therefore, requested to settle his accounts and adjust the same towards the alleged deficit of his share.
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> The important point to be taken into consideration is that during that time as deposed by the respondent, that both stock Auditors and regular Audit Officers verified the accounts and endorsed to the effect that no stock was in deficit and during cross-examination Nagamani admitted that all the employees will be jointly and severally are responsible for the stock deficit and also admitted that she was taking commission on sales and she along with other two employees i.e. Sreenivasa Rao and Mallesu used to manage the shop when the respondent was going on loans canvassing work. When there is a written agreement binding all the employees for the stock deficit, I fail to understand why the appellant has taken arbitrary action against the respondent alone.
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> The evidence of R.W.1 is crystal clear that all concerned employees were not examined in the presence

of the appellant since the appellant has admitted his liability. The learned counsel for the appellant also contended that since the respondent admitted in clear and unequivocal terms, the misconduct levelled against him, no further enquiry is necessary at all. I am unable to agree with the contention of the learned counsel. In this connection, I would like to refer the decision of Madras High Court wherein His Lordship Justice J.Nainar Sundar held, 'A mere interview where self-incriminating statement was taken from an employee is not a substitute for an enquiry into the charge of misconduct where evidence should be recorded. To hold so would be making a mockery of statutory requirement that the services of an employee cannot be dispensed with on a charge of misconduct. Holding an enquiry into those charges is mandatory requirement of Tamilnadu Shops and Establishments Act. When a statute requires that a particular thing should be done in a particular manner, it impliedly prohibits doing the same thing in any manner. When the charges levelled against employees are elaborate, they must be substantiated by evidence to be recorded at an enquiry' (1987-I-LLJ 487). Under A.P.Shops and Establishments Act, 1988, holding enquiry into the charges is a statutory requirement. Admittedly, the concerned employees are not examined in the presence of the respondent. Rule 20 of A.P.Shops and Establishments Rules, 1968 clearly lays down that the employee against whom an enquiry has to be held shall be given an opportunity to answer the charge and shall be permitted to produce witnesses in his defence and cross-examine any witness on whose evidence the charge rests. In the instant case, admittedly no opportunity was afforded to the respondent to produce his witnesses and cross-examine the witnesses of the management.

Under these circumstances, I have come to conclusion that no full proof enquiry was conducted against the respondent. Rule 20 of A.P. Shops and Establishments Rules, 1968 also lays down that in awarding punishment, the previous record of delinquent employees has to be taken into account, but the evidence on record does not disclose that his past record is bad.

> Further, the Sessions Court, Eluru in Criminal Appeal No.189 of 1987 dated 4.5.1990, honourably acquitted the respondent holding for all the aforesaid reasons, I held that there is no acceptable evidence to show that the accused manipulated the accounts books and stock registers and misappropriated the stocks worth about Rs.16,000/-. As the prosecution failed to establish the guilt of the accused for the alleged offence beyond any reasonable doubt, I hold that the trial Court is not right in finding the accused guilty of the offence punishable under Section 409 of Indian Penal Code".

In view of the above, I am of the opinion that the appellate authority has not committed any error in confirming the orders passed by the primary authority. Therefore, the writ petition is liable to be dismissed and accordingly dismissed. No order as to costs.

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C.V.RAMULU, J

Date: 7.11.2006

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.20192 of 1995

7.11.2006

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.20192 of 1995

Date: 7th November, 2006

Between:

The Managing Director,
A.P. State Handloom Weavers' Coop. Society Ltd.,
Narayanguda, Hyderabad & another.

.. Petitioners

And

Second Appellate Authority under Section 48(3)
of the A.P. Shops and Establishments Act, 1988 and
Deputy Commissioner of Labour, Eluru & another.

.. Respondents